



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 20-03329
)
Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 20, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded on August 11, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2022.

The hearing was convened as scheduled on May 23, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. She has worked for her current employer since December 2019. She is applying for a security clearance for

the first time. She is a high school graduate. She married in 1987 and divorced in 2000. Her two children are 34 and 26 years old. (Tr. at 16-19, 35; GE 1, 3)

Applicant was unsophisticated about legal matters when she went through her divorce, and she signed documents that she did not really understand. She did not realize that she agreed that her ex-husband would have custody of the children, and she would be liable for child support. She was ordered to pay about \$300 per month. (Tr. at 16, 19-22, 28-29)

Applicant lost a job in 2010. She had health issues, and went through years of unemployment and underemployment. She contacted the department that handled her child support payments, and she paid \$10 per month, which led to a large amount of arrearages. A March 2020 credit report listed the balance as \$52,751. (Tr. at 25-26; GE 1-3)

Applicant's paychecks from her current employer were garnished about \$70 per week starting in 2020. The payments were going to her ex-husband to pay the arrearages, even though her children had reached majority years earlier. She was garnished \$2,761 in 2020; \$3,904 in 2021; and \$782 in 2022. (Tr. at 16-17, 24-25; AE H)

Applicant's ex-husband passed away in September 2021. Her children petitioned the court to end the child support payments. The court closed the case on March 28, 2022, with the annotation: "All child support amounts established by the court or administrative order, [redacted], including past due support have been collected and the obligation has ended." Applicant's finances are otherwise in order. (Tr. at 15-16, 31-34; AE A-D, F)

Applicant submitted letters attesting to her excellent job performance and strong moral character. She is praised for her trustworthiness, work ethic, and judgment. (AE E, G)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant did not pay all of the court-ordered child support for her children, resulting in arrearages of more than \$50,000. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was naïve when she signed the custody documents for her divorce more than 21 years ago. She lost a job in 2010; she had health issues; and she went through years of unemployment and underemployment. She contacted the department that handled her child support payments, and she paid \$10 per month. Her oldest child turned 18 about 16 years ago, and her youngest child about 8 years ago, but she was still paying the arrearages through garnishment until her ex-husband passed away and the court closed the case. She paid almost \$7,500 from 2020 through 2022. Her finances are otherwise in order.

Applicant's finances do not cast doubt on her current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about her finances are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraph 1.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge